A **BANK PERTANIAN MALAYSIA BERHAD**

v.

NORA'RIFAH DARUS

B COURT OF APPEAL, PUTRAJAYA
LIM YEE LAN JCA
MOHD ZAWAWI SALLEH JCA
UMI KALTHUM ABD MAJID JCA
[CIVIL APPEAL NO: C-02-626-03-2012]
C 22 MAY 2014

CONTRACT: *Loan - Security for loan - Forgery - Allegation of - Plaintiff claimed her signatures on security documents were forged - Judicial evaluation of evidence - Whether trial judge took over simplistic* D *approach when assessing evidence - Plaintiff's version of case fraught with inconsistencies - Whether defendant adduced sufficient and convincing evidence to show proof of execution of document - Whether appellate intervention warranted*

E ***BANKING:*** *Loan - Security for loan - Forgery - Allegation of - Plaintiff claimed her signatures on security documents were forged - Judicial evaluation of evidence - Whether trial judge took over simplistic approach when assessing evidence - Plaintiff's version of case fraught with inconsistencies - Whether defendant adduced sufficient and convincing evidence to show proof of execution of document - Whether appellate* F *intervention warranted*

The plaintiff, the registered proprietor of a piece of land ('the said land') alleged that unbeknown to her, the first defendant (plaintiff's sister-in-law) had obtained loans from the second defendant to G fund a project *ie*, 'Projek Ternakan Ayam Daging di Kampung Sepat Kuantan'. The security for both loans were two third party charges over the said land. The first defendant, however, had defaulted payment. Subsequently, the second defendant obtained an order for sale and commenced foreclosure proceedings. The H plaintiff then commenced legal proceedings for an injunction to call off the auction that was set on 24 September 2008 and a declaration that the charges were null and void. She denied having executed the security documents dated 31 December 2002 and 11 August 2002 and claimed that her signatures on the security I documents were forged. The second defendant refuted the plaintiff's claim and contended that both security documents were duly prepared and the execution done before their solicitors. The

trial judge found that the plaintiff did not execute the security documents and her signatures were forged on these grounds (i) the plaintiff had not been in Pekan at the material time; (ii) both the solicitors (SD2 and SD3) could not remember when exactly the plaintiff had executed the security documents; (iii) SD2 failed to identify the plaintiff. The trial judge thus allowed the plaintiff's claim. Hence, the second defendant appealed. The central issue that arose was that the trial judge had failed to consider the entire evidence of the witnesses brought on record and that there was no judicial evaluation of evidence in totality but isolated scrutiny of the evidence.

Held (allowing appeal with costs)
Per Mohd Zawawi Salleh JCA delivering the judgment of the court:

(1) The plaintiff did not put forth any evidence to rebut the execution of the security documents. The plaintiff only vehemently denied that the charges were executed by her and that she was not in Pekan at the material time. The trial judge had treated the plaintiff's absence at the material time as an *alibi*. The trial judge had taken an over simplistic approach in assessing the evidence. A court has to look at the totality of the evidence and it was important not to slice one part of the evidence away from the whole. A court does not base its conclusion, whether to allow or dismiss the claim, on only part of the evidence. (paras 21 & 22)

(2) The second defendant had adduced uncontroverted evidence establishing that both SD2 and SD3 had prepared statutory declarations and averred that they had witnessed the due execution of the security documents. The trial judge had come to the conclusion that the solicitors' evidence could not be relied upon on the fact that SD2 had failed to identify the plaintiff. However, she had ignored the fact that the plaintiff, in answering the court's question, acknowledged that she recognised SD2. The plaintiff's own acknowledgement ran counter to her evidence given during examination-in-chief that she had never seen SD2 and SD3 before. If the plaintiff's assertion was true, it was inconceivable for the plaintiff to recognise SD2. (paras 23 & 24)

(3) Both SD2 and SD3 stated that in the process of the execution, they had made copies of the plaintiff's identity card. The plaintiff attempted to offer an explanation that she had given the photocopied identity card to her sister, Khatijah Hanim. However, the said sister was not called to verify the assertion. Further, both SD2 and SD3 were also not cross examined on this fact. (para 25)

(4) A plain wading through the evidence, both oral and documentary, revealed that the plaintiff's version of the case was fraught with inconsistencies, contradictions and shifting of facts. It is trite that when witnesses have given conflicting evidence on material facts in issue, the trial judge before whom such evidence is led must make specific findings on the point and in so deciding must give reasons for rejecting one version and accepting the other. Unless this was done, it was unsafe for the court to rely on any evidence before it. (para 28)

(5) The plaintiff had demonstrated that she had a very selective memory of events. The probability of her evidence was further impaired by her own conduct. She only filed the writ and statement of claim on 4 September 2008 when the auction was three weeks away. She had not explained her failure to act promptly in protecting her interest over the said land. The denial by the plaintiff that the signatures on these charges were not hers was contradicted by the evidence from the defendant's witnesses. Her averment, when tested against the totality of the evidence, remained doubtful and could not have brought home the allegation of forgery. On the other hand, the defendant had adduced sufficient and convincing evidence to show proof of execution of document required by law. (paras 29 & 30)

Bahasa Malaysia *Translation Of Headnotes*

Plaintif, pemilik berdaftar sebidang tanah ('tanah tersebut') mendakwa bahawa tanpa pengetahuannya, defendan pertama (kakak ipar plaintif) telah memperolehi pinjaman daripada defendan kedua untuk membiayai projek iaitu 'Projek Ternakan Ayam Daging di Kampung Sepat Kuantan'. Sekuriti untuk kedua-dua pinjaman adalah dua gadaian pihak ketiga ke atas tanah tersebut. Defendan pertama telah gagal membuat bayaran pinjaman. Kemudiannya, defendan kedua memperolehi suatu perintah jualan dan memulakan

prosiding perampasan harta. Plaintif memulakan prosiding undang-undang untuk mendapatkan injunksi bagi membatalkan lelongan yang telah ditetapkan pada 24 September 2008 dan satu pengisytiharan bahawa gadaian-gadaian tersebut adalah tidak sah dan terbatal. Plaintif menafikan bahawa dia telah melaksanakan dokumen sekuriti bertarikh 31 Disember 2002 dan 11 Ogos 2002 dan mendakwa bahawa tandatangannya atas dokumen sekuriti adalah palsu. Defendan kedua menafikan tuntutan plaintif dan menegaskan bahawa kedua-dua dokumen sekuriti telah disediakan dengan sewajarnya dan pelaksanaan telah dibuat di hadapan peguam-peguam mereka. Hakim bicara mendapati bahawa plaintif tidak melaksanakan dokumen sekuriti dan tandatangannya telah dipalsukan atas alasan-alasan ini (i) plaintif tidak berada di kawasan Pekan pada waktu material itu; (ii) kedua-dua peguam (SD2 dan SD3) tidak dapat mengingat bila plaintif telah melaksanakan dokumen sekuriti itu; dan (iii) SD2 gagal untuk mengenalpasti plaintif. Dengan itu, hakim bicara telah membenarkan tuntutan plaintif. Oleh itu, defendan kedua merayu. Isu utama yang timbul adalah bahawa hakim bicara telah gagal mempertimbangkan keterangan keseluruhan saksi-saksi yang direkodkan dan tiada penilaian kehakiman keterangan secara keseluruhan tetapi penilaian terpencil keterangan.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Mohd Zawawi Salleh HMR menyampaikan penghakiman mahkamah:

(1) Plaintif gagal membentangkan keterangan untuk menyangkal pelaksanaan dokumen-dokumen sekuriti. Plaintif hanya menafikan sekeras-kerasnya bahawa gadaian-gadaian telah dilaksanakan olehnya dan dia tidak berada di kawasan Pekan pada waktu material. Hakim bicara telah menganggap ketidakhadiran plaintif pada waktu material itu sebagai *alibi*. Hakim bicara telah mengambil pendekatan yang terlalu mudah dalam penilaian keterangan. Mahkamah harus melihat pada keseluruhan keterangan dan adalah penting untuk tidak mengambil hanya satu bahagian keterangan. Mahkamah tidak akan mendasarkan kesimpulannya, sama ada untuk membenarkan atau menolak tuntutan, atas satu bahagian keterangan sahaja.

(2) Defendan kedua telah mengemukakan keterangan yang tidak boleh disangkal yang membuktikan bahawa kedua-dua SD2 dan SD3 telah menyediakan akuan statutori dan menegaskan

bahawa mereka telah menyaksikan pelaksanaan dokumen-dokumen sekuriti. Hakim bicara telah membuat kesimpulan bahawa keterangan peguam tidak boleh dipercayai berdasarkan fakta bahawa SD2 telah gagal mengenalpasti plaintif. Walau bagaimanapun, dia telah mengabaikan fakta bahawa plaintif, dalam jawapannya pada persoalan mahkamah, mengakui bahawa dia dapat mengecam SD2. Pengiktirafan plaintif sendiri telah bertentangan dengan keterangan yang diberikan olehnya semasa pemeriksaan mahkamah bahawa dia tidak pernah melihat SD2 dan SD3 sebelum ini. Jika penegasan plaintif adalah benar, plaintif tidak akan dapat mengecam SD2.

(3) Kedua-dua SD2 dan SD3 menyatakan bahawa dalam proses pelaksanaan, mereka telah membuat salinan kad pengenalan plaintif. Plaintif cuba untuk memberikan penjelasan bahawa dia telah memberikan salinan kad pengenalannya kepada kakaknya, Khatijah Hanim. Tetapi, kakaknya itu tidak dipanggil untuk mengesahkan penegasan tersebut. Selanjutnya, kedua-dua SD2 dan SD3 juga tidak disoalsiasat atas fakta ini.

(4) Meneliti keterangan lisan dan dokumentar mendedahkan bahawa versi kes plaintif penuh dengan ketidak konsistenan, percanggahan dan beberapa peralihan fakta. Adalah mantap bahawa apabila saksi-saksi memberikan keterangan yang bercanggah dalam fakta material, hakim bicara yang berdepan dengan keterangan bercanggah itu harus membuat dapatan spesifik mengenai perkara itu dan dengan berbuat demikian harus memberi sebab-sebab mengapa menolak satu versi dan menerima yang lagi satu. Melainkan jika ini dilakukan, ia adalah tidak selamat untuk mahkamah bergantung kepada apa-apa keterangan di hadapannya.

(5) Plaintif telah menunjukkan bahawa dia mempunyai memori selektif berkenaan apa yang berlaku. Kebarangkalian keterangannya juga terjejas melalui tingkah lakunya sendiri. Plaintif hanya memfailkan writ dan penyataan tuntutan pada 4 September 2008 tiga minggu sebelum lelongan sepatutnya berlaku. Dia tidak menjelaskan kegagalannya untuk bertindak dengan segera dalam melindungi kepentingannya atas tanah tersebut. Penafian plaintif bahawa tandatangan atas gadaian-gadaian tersebut adalah miliknya telah bercanggah dengan keterangan daripada saksi-saksi defendan. Penegasannya, apabila diuji terhadap keseluruhan keterangan, menimbulkan

keraguan dan tidak boleh membuktikan dakwaan palsu. Sebaliknya, defendan telah mengemukakan keterangan memadai dan meyakinkan untuk menunjukkan keterangan penyempurnaan dokumen yang dikehendaki oleh undang-undang.

Case(s) referred to:

Adorna Properties Sdn Bhd v. Boonsom Boonyanit [2001] 2 CLJ 133 FC ***(refd)***

Choo Kok Beng v. Choo Kok Hoe & Ors [1984] 1 LNS 40 PC ***(refd)***

Darshan Singh Hullan & Anor v. Rangasamy Kailasam & Anor [2012] 1 LNS 957 CA ***(refd)***

Gan Yook Chin & Anor v. Lee Ing Chin & Ors [2004] 4 CLJ 309 FC ***(refd)***

Harun Abd Rahim & Anor v. Jamian Mashood & Anor [2012] 1 LNS 434 HC ***(refd)***

Kyros International Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri [2013] 3 CLJ 813 CA ***(refd)***

Multar Masngud v. Lim Kim Chet & Anor [1982] CLJ 107; [1982] CLJ (Rep) 237 FC ***(refd)***

Sundram Ramasamy v. Arujunan Arumugam & Anor [1994] 4 CLJ 300 SC ***(refd)***

Perembun (M) Sdn Bhd v. Conlay Construction Sdn Bhd [2012] 4 MLJ 149 CA ***(refd)***

United Asian Bank Bhd v. Tai Soon Heng Construction Sdn Bhd [1993] 2 CLJ 31 SC ***(refd)***

For the appellant - A Ramanathan; M/s Loke, Chew & Zainal
For the respondent - Mohd Taufik Md Tahir; M/s Bob S Arumugam & Co

[Appeal from High Court, Kuantan; Civil Suit No: MT (2)22-134-2008]

Reported by Suhainah Wahiduddin

JUDGMENT

Mohd Zawawi Salleh JCA:

Introduction

[1] The appellant ('second defendant') appealed against the decision of the High Court at Kuantan in which the court had allowed the plaintiff's claim and declared that the security documents registered on land under title GM 69 Lot 1527, Mukim Pekan, District of Pekan, Pahang ('the said land') under presentation No. 18/2003 registered on 15 January 2003 and presentation No. 679/2004 registered on 13 August 2004 were

null and void by reason of forgery. The court further ordered that the charge endorsements to the second defendant be deleted from the registration/record and the land title be returned to the plaintiff.

[2] On 15 November 2013 we unanimously allowed the appeal with costs fixed at RM5,000. Deposit to be refunded to the second defendant.

[3] We now give our grounds.

[4] We will refer to the parties as they stood at the trial.

Facts Of The Case

[5] The facts of the case which are germane to the disposal of this appeal can be briefly recounted thus: The plaintiff was the registered proprietor of the said land. Plaintiff alleged that unbeknown to her, the first defendant (plaintiff's sister in-law) had obtained loans from the second defendant to fund a project ie, 'Projek Ternakan Ayam daging di Kampung Sepat Kuantan'. The security for both loans was two third party charges over the said land which was perfected and executed *vide* presentation No. 18/2003 and 679/2004 respectively.

[6] The plaintiff had lodged first police report on 18 January 2006 at Bagan Serai Police Station and second police report on 27 January 2006 at Kuantan Police Station.

[7] The first defendant defaulted payment. After various notices of demand to both the first defendant and the plaintiff demanding for payment, the second defendant obtained order for sale and commenced foreclosure proceedings and the auction was set on 24 September 2008.

[8] In the year 2008, the plaintiff commenced legal proceedings for an injunction to call off the auction and a declaration that the charges were null and void. She denied having executed the security documents dated 31 December 2002 and 11 August 2004. She also claimed that her signatures on the security documents were forged.

[9] The first defendant did not enter appearance and the case proceeded with no order made against her. The second defendant refuted the plaintiff's claim and contended that both security

documents were duly prepared by Messrs Mohd Sofian & Co and Messrs Bahari Choy & Nongchik respectively and the execution done before the solicitors attached to the firms.

[10] On 13 February 2012, learned trial judge allowed the plaintiff's claim. Hence, this appeal.

The Appeal

[11] The sole issue for determination in this appeal is whether the security documents dated 31 December 2002 and 11 August 2004 were forged.

[12] In order to substantiate her claim of forgery, the plaintiff gave oral evidence that she was at Bagan Serai, Perak on 31 December 2002 and on 11 August 2004 and could not possibly execute both security documents. Mohd Salim bin Abdul Rahman (SP1), the headmaster of Sekolah Kebangsaan Jalan Matang Buluh, Bagan Serai Perak, was called and the school attendance sheet was produced to confirm the plaintiff's attendance at the school on 11 August 2004. The plaintiff claimed that she resided in Bagan Serai from year 2002 until year 2008. The plaintiff's mother ("SP2") also testified that the original issue document of title was stolen by her son, ie, the first defendant's husband but it was returned to her subsequently.

[13] Learned trial judge held that the allegation of forgery had to be established beyond reasonable doubt. Her Ladyship found that on the evidence adduced, the plaintiff did not execute the security documents and her signatures were forged. Her Ladyship's finding was premised on the following grounds:

(i) The plaintiff was not in Pekan at the material time and she was in Bagan Serai where she was teaching;

(ii) The plaintiff took immediate action to lodge police reports;

(iii) Both solicitors (SD2 and SD3) maintained that the plaintiff had signed the documents 1 (one) or 2 (two) weeks prior to the stamping date. However, neither could remember when exactly the plaintiff executed the security documents;

(iv) SD2, the first attesting solicitor who prepared the first set of security documents, failed to identify the plaintiff;

(v) The statutory declarations dated 22 November 2010 and 13 October 2011 were made many years after the execution; and

(vi) Even though both Malaysian and Singaporean chemistry departments could not confirm whether the signatures were forged, the court could rely on the oral evidence of the witnesses.

Parties' Competing Submissions

[14] Learned counsel for the second defendant submitted that learned trial judge had misconceived the standard of proof, when she held that when a plaintiff pleaded forgery, the standard of proof is beyond reasonable doubt. According to learned counsel, the plaintiff did not plead fraud. She only pleaded forgery and under the law the burden is on balance of probabilities. (See *Adorna Properties Sdn Bhd v. Boonsom Boonyanit* [2001] 2 CLJ 133; [2001] 1 MLJ 241 (FC)).

[15] Learned counsel further submitted that the central issue of this appeal was not the measure of proof adopted by learned trial judge, but her failure to consider the entire evidence of the witnesses brought on record in the examination-in-chief, cross-examination and re-examination. In other words, it was the contention of learned counsel that there was no judicial evaluation of evidence in totality but isolated scrutiny of the evidence by learned trial judge.

[16] In reply, learned counsel for the plaintiff submitted that although learned trial judge erred when she made her decision by using the wrong standard of proof in this instant case, however, the evidence adduced before the court was sufficient to bring home a case of forgery on a balance or probabilities.

[17] During the course of the argument, learned counsel for plaintiff reminded us that evaluation of evidence is primarily the function of the trial judge. Interference by an appellate court could only occur where and when the trial judge fails to evaluate such evidence at all or he or she fails to do so properly. Where, therefore, the trial judge has satisfactorily performed his or her function of evaluating the evidence and correctly ascribing probative value to it, an appellate court has no business interfering

with the finding on such evidence (See *Harun Abd Rahim & Anor v. Jamian Mashood & Anor* [2012] 1 LNS 434; [2013] 7 MLJ 105; *Darshan Singh Hullan & Anor v. Rangasamy Kailasam & Anor* [2012] 1 LNS 957; [2013] 2 MLJ 51; *Perembun (M) Sdn Bhd v. Conlay Construction Sdn Bhd* [2012] 4 MLJ 149). Learned counsel submitted that it was not correct to contend that the way in which learned trial judge had approached the case was wrong and that her decision was not justified.

Our Findings

[18] At the outset we must say that the jurisdiction of the appellate court to intervene with the finding of facts by a trial judge is well defined in *catena* of decisions by our courts. It has been settled that an appellate court can intervene with the finding of facts when the findings are grounded entirely on speculations, surmises or conjectures; when an inference made by a trial court from its factual findings is plainly wrong, absurd or illogical; where there is none or insufficient judicial appreciation of evidence; when the findings of a trial court run contrary to the admission of the parties to the case, or fail to notice certain relevant facts which if properly considered, will justify a different conclusion; when the findings of fact are premised on the absence of evidence, or are contradicted by the evidence on record. (See *Gan Yook Chin & Anor v. Lee Ing Chin & Ors* [2004] 4 CLJ 309; [2005] 2 MLJ 1 (FC); *Kyros International Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2013] 3 CLJ 813; [2013] 2 MLJ 650; *Sundram Ramasamy v. Arujunan Arumugam & Anor* [1994] 4 CLJ 300; *Multar Masngud v. Lim Kim Chet & Anor* [1982] CLJ 107; [1982] CLJ (Rep) 237; *Choo Kok Beng v. Choo Kok Hoe & Ors* [1984] 1 LNS 40; [1984] 2 MLJ 165b).

[19] In this instant case, after having heard the parties at length and upon careful perusal of the records of appeal, we were of the considered opinion that this was a case in which appellate intervention was warranted.

[20] We agreed with the submission of learned counsel for the second defendant that the plaintiff's case was one of forgery and the standard of proof was 'on the balance of probability' as held by the then Supreme Court in *United Asian Bank Bhd v. Tai Soon Heng Construction Sdn Bhd* [1993] 2 CLJ 31 at p. 37; [1993] 1 MLJ 182 at p. 188, where Anuar J (later CJ, Malaya) said:

Another important matter has been raised by the appellant in connection with the issue of forgery. It was argued for the appellant both in the Court below and before us that the standard of proof required in cases such as this should be beyond a reasonable doubt and *Syarikat Perkapalan Timor v. United Malayan Banking Corp. Bhd.* [1982] 2 MLJ 193 was cited in support. We have examined this decision with some care but we are unable to agree with the appellant's Counsel that it is authority for the proposition that is put forward for the appellant. In our judgment, a customer who alleges that his banker honoured forged cheques drawn on his account need only establish the charge of forgery on a balance of probabilities and in this respect, we agree with the statement of the law by Gunn Chit Tuan J (as he then was) in *Syarikat Islamiyah v. Bank Bumiputra Malaysia Bhd.* [1988] 3 MLJ 218 where at p. 220 the learned Judge said:

> In this case although it would appear that there was no or insufficient evidence to prove beyond reasonable doubt for purposes of criminal proceedings that the signatures on the cheques concerned were forged by the said Awang *alias* Che Mah bin Che Lob, yet I was satisfied that there was evidence adduced to prove on a balance of probabilities in this case that the signatures on the cheques were not those of the plaintiff's but were forged or placed there on without the plaintiff's authority and were therefore wholly inoperative.
>
> We are therefore of the opinion that the learned Judge did not misdirect himself on the measure of proof that is required to bring home a case of forgery on the facts of such a case as the one before us.

[21] The plaintiff vehemently denied that the charges were executed by her. The plaintiff did not put forth any evidence to rebut the execution of the security documents. She merely stated that she was not in Pekan at the material time. In respect of the second charge, the school attendance sheet was produced. It would appear that learned trial judge had treated the plaintiff's absence at the material time as an *alibi*.

[22] To our minds, learned trial judge took an over simplistic approach in assessing the evidence. It is trite that a court has to look at the totality of the evidence and it is important not to slice one part of the evidence away from the whole. A court does not base its conclusion, whether to allow or dismiss the claim on only part of the evidence. What must be borne in mind is that the conclusion which is reached must account for all the evidence.

Some of the evidence might be found to be false; some of it might be found to be unreliable; and some of it might be found to be only possibly false or unreliable; but none of it may simply be ignored.

[23] In this instant case, the second defendant had adduced uncontroverted evidence establishing that both SD2 and SD3 had prepared statutory declarations and averred that they had witnessed the due execution of the security documents.

[24] Learned trial judge did not accept the solicitors' evidence. The factor which weighed in the mind of learned trial judge to come to the conclusion that the solicitors' evidence could not be relied upon was the fact that SD2 had failed to identify the plaintiff. However, she had ignored the fact that the plaintiff, in answering the court's question, acknowledged that she recognised SD2. The plaintiff's own acknowledgement, ran counter to her evidence given during examination-in-chief that she had never seen SD2 and SD3 before. If the plaintiff's assertion was true, it was inconceivable for the plaintiff to recognise SD2. Further, SD3 had identified the plaintiff and could comment that the plaintiff had put on some weight.

[25] Both SD2 and SD3 stated that in the process of the execution, they had made copies of the plaintiff's identity card. The plaintiff attempted to offer an explanation that she gave the photocopied identity card to her sister, Khatijah Hanim. The first defendant could have taken it from Khatijah Hanim and gave it to the solicitors. However, the said sister was not called to verify the assertion. Further, both SD2 and SD3 were also not cross-examined on this fact.

[26] Both SD2 and SD3 stated that the security documents were dated and stamped. Both SD2 and SD3 maintained that the date 31 December 2002 and 11 August 2004 were not the execution dates and the plaintiff had executed the documents earlier.

[27] The plaintiff also called her mother (SP2) to substantiate her claim of forgery. SP2 stated that the original title was stolen by her son, the first defendant's husband. Her evidence contradicted the plaintiff's evidence that the original title was taken by the first defendant herself. Both versions were inconceivable as there was no need for either the first defendant nor her husband to return the original title to SP2 if they intended to perform a third party charge without SP2 or the plaintiff's knowledge.

[28] A plain wading through the evidence both oral and documentary revealed that the plaintiff's version of the case was fraught with inconsistencies, contradictions and a lot of shifting of facts. It is trite that when witnesses have given conflicting evidence on material facts in issue, the trial judge before whom such evidence is led must make specific findings on the point and in so deciding must give reasons for rejecting one version and accepting the other. Unless this is done, it is unsafe for the court to rely on any evidence before it. Unfortunately, this was not done by learned trial judge in this instant case.

[29] Further, we found that the plaintiff had demonstrated that she had a very selective memory of events. She strongly denied the execution of these two charges in 2002 and 2004 but could not remember how the land was transferred to her by her father, or the details of the sale and purchase of a house in 2008. The probability of her evidence was further impaired by her own conduct. The plaintiff had discovered the charges on 17 January 2006 and reported the matter to the authorities on 18 January 2006 and 27 January 2006. She took no action after making those reports and only filed the writ and statement of claim on 4 September 2008 when the auction was three weeks away. She had not explained her failure to act promptly in protecting her interest over the said land.

Conclusion

[30] In the instant appeal, the denial by the plaintiff that the signatures on these charges were not hers was contradicted by the evidence from the defendant's witness. Her averment, when tested against the totality of the evidence, remained doubtful and could not have brought home the allegation of forgery. On the other hand, the defendant had adduced sufficient and convincing evidence to show proof of execution of document required by law.

[31] We were satisfied that had learned trial judge adopted the correct approach to the evaluation of the evidence, she would have dismissed the plaintiff's claim. Consequently, the appeal was allowed with costs and we set aside the decision of learned trial judge.